

Dated: July 18, 1989.

Susan Recce Lamson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89-20397 Filed 8-29-89; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Lower Keys Rabbit and Threatened Status for the Squirrel Chimney Cave Shrimp

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine the Lower Keys rabbit (*Sylvilagus palustris hefneri*) to be an endangered species and the Squirrel Chimney cave shrimp (*Palaemonetes cummingsi*) to be a threatened species pursuant to the Endangered Species Act of 1973, as amended (Act). These species are found only in Florida. The Lower Keys rabbit is restricted to a few keys in Monroe County and is endangered by loss of wetlands to residential development. The Squirrel Chimney cave shrimp is restricted to one site in Alachua County, Florida. It is threatened by potential development. This proposal, if made final, would implement the protection and recovery provisions afforded by the Act for these species. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by October 30, 1989. Public hearing requests must be received by October 18, 1989.

ADDRESSES: Comments and materials concerning this proposal should be sent to Field Supervisor, Jacksonville Field Office, U.S. Fish and Wildlife Service, 3100 University Boulevard South, Suite 120, Jacksonville, Florida 32216. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: David J. Wesley, Field Supervisor, at the above address (telephone 904/791-2580 or FTS 946-2580).

SUPPLEMENTARY INFORMATION:

Background

The Lower Keys rabbit (*Sylvilagus palustris hefneri*) is an island subspecies of the widespread marsh rabbit. The subspecies was described by Lazell in 1984, based on a specimen from

Sugarloaf Key, Monroe County, Florida (Lazell 1984). The Lower Keys rabbit measures about 40 centimeters (16 inches) in total length and has brownish fur dorsally and gray fur ventrally. It differs from the marsh rabbit of peninsular Florida (*Sylvilagus palustris paludicola*) principally in skull characters.

In recent times, the Lower Keys rabbit was found on at least ten of the Lower Keys, but may now be extirpated from five of these. The rabbit does not occur east of the Seven Mile Bridge; it is replaced in the Upper Keys by the subspecies *Sylvilagus palustris paludicola*. The Lower Keys rabbit is restricted to marshes, ranging from saline to fresh water. Salt marshes in the area are typically vegetated with fringerush (*Fimbristylis* sp.), buttonwood (*Conocarpus erectus*), cordgrass (*Spartina alterniflora*), saltwort (*Batis maritima*), glasswort (*Salicornia virginica*), sawgrass (*Cladium jamaicense*), and sea oxeye (*Borrchia frutescens*). Fresh water marshes support cattail (*Typha latifolia*), sedges (*Cyperus* sp.), and sawgrass. Marshes are very limited in the Lower Keys, since mangroves occupy many coastal areas and interior fresh water habitat is scarce. Known localities for the Lower Keys rabbit are on Federal (National Key Deer Refuge, Key West Naval Air Station), State (Florida Department of Transportation), and private lands. The primary cause of the decline of the Lower Keys rabbit is the filling of wetlands for residential, commercial, and military purposes.

The species was considered a category 2 species in the Service's notice of review published in the *Federal Register* of September 18, 1985 (50 FR 37959), and also in the notice of review published in the *Federal Register* of January 6, 1989 (54 FR 554), indicating that listing was possibly appropriate.

The Service was petitioned to list the Lower Keys rabbit as an endangered species by Ms. Joel Beardsley in a letter received April 17, 1985. Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended in 1982, requires that for any such listing petition containing substantial information, a finding be made within 12 months of receipt of the petition. The Service made a finding that the petition presented substantial information and that the requested action may be warranted on August 30, 1985 (50 FR 35272). Subsequent 1-year findings for 1986 (51 FR 29673; August 20, 1986), 1987 (53 FR 25512; July 7, 1988), and 1988 (53 FR 31723; August 19, 1988) were that the petition was warranted but precluded by other listing activities. In April 1989

the Service made a final finding, based on additional status survey information, that listing of the species was warranted. Publication of the present proposal implements that finding.

The Squirrel Chimney cave shrimp (*Palaemonetes cummingsi*), a decapod crustacean of the family Palaemonidae, was described by Chase in 1954. It measures about 30 millimeters (1.2 inches) in total length and is transparent. The body and eyes are unpigmented, and the eyes are reduced in size in comparison to surface-dwelling species of *Palaemonetes*. The Squirrel Chimney cave shrimp (also known as the Florida cave shrimp) is restricted to Squirrel Chimney, a sinkhole near Gainesville, Alachua County, Florida. The site is privately owned. Squirrel Chimney is a small sinkhole which leads to a flooded cave system over 30 meters (100 feet) deep. Several other cave-dwelling invertebrates are found in Squirrel Chimney: McLane's cave crayfish (*Troglocambarus macleani*), the light-fleeing crayfish (*Procambarus lucifugus*), the pallid cave crayfish (*Procambarus pallidus*) (a category 2 candidate for Federal listing), and Hobb's cave amphipod (*Crangonyx hobbii*). The site supports one of the richest cave invertebrate faunas in the United States. In 1983, the site was proposed for recognition as a National Natural Landmark, but the National Park Service has not yet taken final action on the proposal.

The Squirrel Chimney cave shrimp is considered threatened by the Florida Committee on Rare and Endangered Plants and Animals, while the other four species are considered species of special concern. The Squirrel Chimney cave shrimp was classified a category 2 species in the Service's May 22, 1984, invertebrate review notice (49 FR 21664), and also in the animal notice of review published January 6, 1989 (54 FR 554). It is threatened by potential residential development and changes in land use.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the Lower Keys rabbit (*Sylvilagus palustris hefneri*) and the

Squirrel Chimney cave shrimp (*Palaemonetes cummingsi*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* (1) Lower Keys rabbit—This species probably originally occurred in suitable habitat throughout the larger Lower Florida Keys. Lazell (1984) reported the rabbit from Lower Sugarloaf, Geiger, Saddlebunch, Boca Chica, and Big Pine Keys. He documented 13 sites from these keys (records in Florida Natural Areas Inventory, Tallahassee, Florida). Based on interviews with local residents, he believes that the species also formerly occurred on Cudjoe, Ramrod, Middle Torch, Big Torch, and Key West Keys, but has been extirpated at these sites (J.D. Lazell, The Conservation Agency, *in litt.*, 1985). Lazell (*in litt.* 1985) also provided a rough population estimate, based on pellet counts, of 259 remaining Lower Keys rabbits. Based on interviews with local residents, he believed that the Lower Keys rabbit had been locally common as recently as the 1950's.

The Refuge Manager of the Service's National Wildlife Refuge Complex in the Florida Keys (Key Deer, Key West, and Great White Heron) reviewed the annual reports of that station for information on the Lower Keys rabbit (*in litt.* 1986). The rabbit was known to be present on Refuge lands on Boca Chica, Saddlebunch, and Big Pine Keys, but not on the smaller, outer keys of these refuges. The species was not considered abundant, and was believed to be restricted to keys with available fresh water. Only a few rabbits have been seen since 1984. Howe (1986) surveyed Lazell's 13 sites, as well as additional areas, in a status survey funded by the Service and carried out by the Florida Game and Fresh Water Fish Commission. He found rabbits at 12 locations (one additional site was found following the conclusion of his survey), while they appear to have been extirpated from 4 or possibly 5 previously known sites (Howe, personal communication). Filling for development or road construction has resulted in the destruction of the rabbit's habitat at these sites. Only 6 of the 13 remaining known sites are secure from development. The species may also be extirpated from Saddlebunch Key, where most of the habitat has been destroyed. Howe estimates that 200-400 Lower Keys rabbits remain on Sugarloaf, Welles, Annette, Boca Chica, Big Pine, and Hopkins Keys in small, scattered populations.

(2) Squirrel Chimney cave shrimp—This species is known from only one sinkhole. Any detrimental change to the sinkhole or the underlying aquifer has the potential to adversely affect or even cause the extinction of the species. The property surrounding the sinkhole is currently oak hammock and pine plantation, but it may be developed for residential use (single-family houses) in the foreseeable future. The property is in an actively developing area on the outskirts of Gainesville. Septic tanks and the use of pesticides and herbicides associated with residential development have the potential to degrade water quality in the aquifer, and human activities in the vicinity of the sinkhole could damage the vegetation in and around the sink. Forestry practices have the potential to damage the sinkhole through erosion or pesticides. The current property owners intend to give The Nature Conservancy the first option to purchase the land around the sinkhole, but even if this site is acquired, the sinkhole will remain vulnerable to development in the near vicinity.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The Lower Keys rabbit was actively hunted in the past (Lazell 1985), but it is not known whether such activity continues. The current small population size and limited distribution of this animal would make any hunting a serious threat. The Squirrel Chimney cave shrimp is restricted to one small site that could be seriously damaged by a single act of vandalism.

C. *Disease or predation.* The Lower Keys rabbit is vulnerable to predation by feral house cats, which are common on the Lower Keys. Mammalian predators such as cats are not native to the Lower Keys, and wildlife there, as on many islands, may not be well adapted to withstanding such predation. Disease or predation are not known to be affecting the Squirrel Chimney cave shrimp.

D. *The inadequacy of existing regulatory mechanisms.* No existing regulatory mechanisms apply to the Lower Keys rabbit or the Squirrel Chimney cave shrimp.

E. *Other natural or manmade factors affecting its continued existence.* The Lower Keys rabbit occurs in small, disjunct populations which may persist only due to migration among colonies. The continuing urbanization of the Lower Keys makes such movements increasingly difficult. Other natural or manmade factors are not known to be affecting the Squirrel Chimney cave shrimp.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. Based on this evaluation, the preferred action is to list the Lower Keys rabbit as an endangered species and the Squirrel Chimney cave shrimp as a threatened species. The Lower Keys rabbit is in danger of extinction throughout a significant portion, if not all, of its range. While not in immediate danger of extinction, the Squirrel Chimney cave shrimp is likely to become an endangered species in the foreseeable future.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the Lower Keys rabbit or the Squirrel Chimney cave shrimp. Publication of critical habitat maps for the Lower Keys rabbit could result in hunting or poaching of this species in its few remaining sites. Federal agencies with Lower Keys rabbits on their properties have been notified. If the rabbit is listed as an endangered species, their activities will be subject to Section 7 of the Act, as discussed under "Available Conservation Measures."

The Squirrel Chimney cave shrimp is restricted to a single known locality that could easily be damaged by vandalism (see factor "B." above). The private landowners do not desire visitors at the site. No Federal activities are known or anticipated at the site.

Publication of critical habitat descriptions would make both species more vulnerable to take or vandalism. For the above reasons, the Service has concluded that designation of critical habitat is not prudent for the Lower Keys rabbit or the Squirrel Chimney cave shrimp. All involved parties and land owners will be notified of the location and the importance of protecting the habitat of these species. Protection will be addressed through the recovery process and through the Section 7 jeopardy standard.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions

against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. For the Lower Keys rabbit, affected Federal agencies are the U.S. Navy and the U.S. Army Corps of Engineers. The rabbit occurs on Key West Naval Air Station, and the Corps has jurisdiction over some of the wetlands used by the rabbit through its permitting authority pursuant to Section 404 of the Clean Water Act. The Navy currently anticipates no conflicts with its mission on Key West Naval Air Station. The Corps must now evaluate wetland permit applications for potential effects on the Lower Keys rabbit. If appropriate, the Corps must confer with the Service concerning the Lower Keys rabbit. Wetland permitting in some areas may become more restrictive.

No Federal agency involvement is anticipated for the Squirrel Chimney cave shrimp.

The Act and its implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general trade prohibitions and exceptions that apply to endangered and threatened wildlife. These prohibitions, in part, make it

illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or for special purposes consistent with the purposes of the Act.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposal are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data covering any threat (or lack thereof) to these species;

(2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of these species;

(4) Current or planned activities in the subject area and their possible impacts on these species.

Final promulgation of the regulations on these species will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of final regulations that differ from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such

requests must be made in writing to the Field Supervisor (see Addresses section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the *Federal Register* on October 25, 1983 (48 FR 49244).

References Cited

Chase, F.A., Jr. 1954. Two new subterranean shrimp (Decapoda:Carideae) from Florida and the West Indies, with a revised key to the American species. *J. Wash. Acad. Sci.* 44:318-324.

Howe, S.E. 1982. Lower Keys rabbit status survey. Final report of Florida Game and Fresh Water Fish Commission to Jacksonville Field Office of U.S. Fish and Wildlife Service under Cooperative Agreement 14-16-004-87-939. 10 pp.

Lazell, J.D., Jr. 1984. A new marsh rabbit (*Sylvilagus palustris*) from Florida's Lower Keys. *J. Mamm.* 65(1):26-33.

Author

The primary author of this proposed rule is Dr. Michael M. Bentzien (see Addresses section above).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife. Fish, Marine mammals, Plants (agriculture).

Proposed Regulations Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 92 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411; Pub. L. 100-478, 102 Stat. 2306; Pub. L. 100-653, 102 Stat. 3825 (16 U.S.C. 1531 *et seq.*); Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted.

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under the groups indicated, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Mammals:							
Rabbit, Lower Keys	<i>Sylvilagus palustris hefneri</i>	U.S.A. (FL)	Entire	E		NA	NA
Crustaceans:							
Shrimp, Squirrel Chimney (=Florida) cave	<i>Palaemonetes cummingsi</i>	U.S.A. (FL)	NA	T		NA	NA

Dated: July 18, 1989.

Susan Reece Lamson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 650

Atlantic Sea Scallop Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan and request for comments.

SUMMARY: NOAA issues this notice that the New England Fishery Management Council (Council) has submitted Amendment 3 (Amendment) to the Fishery Management Plan for Atlantic Sea Scallops (FMP) for review by the Secretary of Commerce. Written comments are invited from the public. Copies of Amendment 3 may be obtained from the address below.

DATE: Comments on the Amendment should be submitted on or before October 23, 1989.

ADDRESS: All comments should be sent to Richard Roe, Regional Director, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Clearly mark the outside of the envelope "Comments on Amendment 3 to the Sea Scallop FMP."

Copies of the Amendment are available upon request from Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route 1), Saugus, MA 01906.

FOR FURTHER INFORMATION CONTACT: Patricia A. Kurkul, Resource Policy Analyst, (508) 281-9331.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and

Management Act (Magnuson Act) (16 U.S.C. 1801 *et seq.*) requires that each regional fishery management council submit any fishery management plan or plan amendment it prepares to the Secretary of Commerce (Secretary) for review, approval and implementation. The Magnuson Act also requires that the Secretary, upon receiving the plan or amendment, immediately publish a notice of availability for public review and comment. The Secretary considers any public comments received in determining whether to approve the plan or amendment.

Amendment 3 would require all sea scallop dredge vessels, and all vessels landing more than 5 bushels (176.2 l) of sea scallops in the shell, to offload all fish (including sea scallops) within a 12-hour time window. In addition, the Amendment would require all other vessels landing more than 40 pounds (18.1 kg) of shucked scallops to offload all sea scallops within a specified offloading window. The proposed 12-hour offloading windows are as follows:

State of offloading	Period
ME, NH, NC, SC, GA & FL	7 a.m. to 7 p.m.
MA, RI & CT	5 a.m. to 5 p.m.
NY, NJ, DE, MD, VA & PA	6 a.m. to 6 p.m.

The purpose of this Amendment is to improve compliance with the meat-count/shell-height standards of the FMP by implementing a mandatory structure for the offloading of harvested sea scallops. Amendment 3 is also designed to enhance the efficiency and effectiveness of NMFS enforcement efforts in the Atlantic sea scallop fishery.

The windows cover different periods in different states where Atlantic sea scallops are offloaded, to accommodate industry practices, which vary by state. The windows would reduce by half the amount of time, during any day, within which scallops could lawfully be offloaded from any vessel subject to the offloading windows. Offloading outside an offloading window would constitute a separate violation of the regulations—

regardless of the meat-count/shell-height measurements of the scallops being offloaded.

Regulations proposed by the Council to implement this Amendment are scheduled to be published within 15 days.

Authority: 16 U.S.C. 1801 *et seq.*

List of Subjects in 50 CFR Part 650

Fish, Fisheries.

Dated: August 24, 1989.

David S. Crestin,

Deputy Director, Office of Fishery Conservation and Management.

[FR Doc. 89-20395 Filed 8-25-89; 11:07 am]

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50 CFR Part 651

RIN 0649-AC79

Northeast Multispecies Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan and request for comments.

SUMMARY: NOAA issues this notice that the New England Fishery Management Council (Council) has submitted Amendment #3 (Amendment) to the Fishery Management Plan for the Northeast Multispecies Fishery (FMP) for review by the Secretary of Commerce. Written comments are invited from the public on the Amendment and associated documents.

DATE: Comments will be accepted until October 23, 1989.

ADDRESSES: All comments should be sent to Richard B. Roe, Regional Director, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Clearly mark the outside of the envelope "Comments on Multispecies Amendment #3".